

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACI HUTTO and JENNIFER MELNYK,
*individually and as representatives of the
class,*

Plaintiffs,

v.

ALBERTSONS COMPANIES, INC.,
ALBERTSON'S LLC, ALBERTSONS
COMPANIES, LLC, NEW ALBERTSONS,
L.P., ALBERTSONS STORES SUB
HOLDINGS, LLC, AB ACQUISITION LLC,
AB MANAGEMENT SERVICES CORP.,
AMERICAN FOOD AND DRUG LLC, INK
HOLDINGS, LLC, and ALBERTSON'S
HOLDINGS LLC,

Defendants.

Case No. 3:20-cv-07541-MMC

~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
GRANTING IN PART AND DENYING IN
PART MOTION FOR ATTORNEYS' FEES,
COSTS, AND CLASS REPRESENTATIVE
SERVICE AWARDS

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2 BEFORE THE COURT are Plaintiffs’ Motion for Final Approval of Class Action
3 Settlement and Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards, submitted
4 by Class Representatives Jaci Hutto and Jennifer Melnyk (“Plaintiffs” or “Class Representatives”),
5 individually, and on behalf of all Settlement Class Members pursuant to Federal Rule of Civil Procedure
6 23. Dkt. Nos. 48, 50. A Final Fairness Hearing was held on June 11, 2021.

7 The Court, having considered both Motions, the submissions of the
8 Parties relating to the proposed Settlement, any objections, the arguments of counsel at the Final Fairness
9 Hearing as well as the pleadings and papers on file herein, is of the opinion that the Motion for Final
10 Approval of Class Action Settlement should be granted, and that the Motion for Attorneys’ Fees, Costs,
11 and Class Representative Service Awards should be granted as to attorneys’ fees and costs and granted
12 in part as to Class Representative service awards.
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14 It is therefore ORDERED that Plaintiffs’ Motion for Final Approval of Class Action Settlement
15 is GRANTED and that Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service
16 Awards is GRANTED IN PART and DENIED IN PART. Accordingly, it is further ORDERED as
17 follows, and the Court makes the findings set forth below:

18 1. Settlement Agreement. “The Class Action Settlement Agreement” (“Agreement”)
19 that was submitted with the Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (Dkt.
20 No. 38); the Exhibits to the Agreement as revised in Dkt. No. 44; and the definitions of words and terms
21 contained in the Agreement are incorporated in this Order.

22 2. Preliminary Approval Order. On February 19, 2021, this Court entered an Order
23 Granting Plaintiffs’ Motion for Preliminary Approval of Class Settlement, Conditional Certification of
24 Settlement Class, and Approval of Proposed Notice to Settlement Class (Docket Entry No. 47)
25 (“Preliminary Approval Order”). The Agreement was preliminarily approved, pending the Final Fairness
26 Hearing. The Court also (a) conditionally certified the Settlement Class for settlement purposes; (b)
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1 approved the form of and method of distribution of the Settlement Notice and Claim Form to the
2 Settlement Class; (c) appointed Jaci Hutto and Jennifer Melnyk as Class Representative for the Settlement
3 Class; (d) appointed Jessica L. Lukasiewicz and Jonathan W. Ferris of THOMAS & SOLOMON LLP as
4 Class Counsel for the Settlement Class; and (e) appointed American Legal Claims Services, LLC, as the
5 Claims Administrator. The terms of and findings made in the Preliminary Approval Order are adopted
6 and incorporated into this Order.

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8 3. Final Class Certification for Settlement Purposes. Pursuant to Federal Rule of
9 Civil Procedure 23(b)(3), the Court finally certifies, for settlement purposes only, the following class, to
10 be known as the “Settlement Class:”

11 All employees and/or prospective employees of Defendants within the United States who
12 were the subject of a consumer report by Defendants anytime between and including
13 October 24, 2017 and November 25, 2019, inclusive.

14 4. Prerequisites for Class Action. Solely for the purposes of settlement, the Court
15 finds that the prerequisites for a class action under Federal Rule of Civil Procedure 23(a) are satisfied for
16 the following reasons:

- 17 (a) The Settlement Class appears so numerous that joinder of all members
18 is impracticable. The Settlement Class consists of approximately 68,181
19 members;
20 (b) There appear to be questions of law or fact common to the Settlement Class
21 for purposes of determining whether the settlement should be approved;
22 (c) The Class Representatives’ claims for the alleged violations of the
23 disclosure provisions of the Fair Credit Reporting Act appear to be typical
24 of the claims of the Settlement Class; and
25 (d) The Class Representatives and Class Counsel appear to be capable of fairly
26 and adequately protecting the interests of the Settlement Class Members in
27 connection with the proposed Settlement.

28 5. Rule 23(b)(3) Class Action. The Court finds, for settlement purposes, that this
action is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3) because:

- 1 (a) Common questions of law and fact appear to predominate over questions
affecting only individual persons in the Settlement Class; and,
- 2 (b) Certification of the Settlement Class appears to be superior to other
3 available methods for the fair and efficient resolution of the claims of the
4 Settlement Class members.

5 6. Notice of Class Action Settlement to the Settlement Class. Pursuant to the
6 Preliminary Approval Order and the Agreement, the Summary Notice was emailed and/or mailed to
7 members of the Settlement Class. The Court finds that the form, content, and method for notifying the
8 Settlement Class comply with the Preliminary Approval Order, meet the requirements of Federal Rule of
9 Civil Procedure 23(c)(2)(B) and all due process requirements, is the best notice practicable under the
10 circumstances and constitutes due and sufficient notice to all persons entitled to notice. The Court further
11 finds that the Claims Administrator has complied with the Preliminary Approval Order and with the
12 requirements of and procedures under the Agreement for distribution of the Notice to the Settlement
13 Class.

14 7. Notice Under CAFA. The Claims Administrator served notices of the proposed
15 settlement on the United States Attorney General and Attorneys General for the States in which
16 Settlement Class Members reside pursuant to the Class Action Fairness Act (“CAFA”) of 2005, 28 U.S.C.
17 § 1715. The Court finds that the Claims Administrator’s notification of the proposed Settlement fully
18 complies with the requirements of CAFA.

19 8. Exclusions. Settlement Class Members were notified in the Settlement Notice of
20 this class action settlement and of their opportunity to request to be excluded from, or to opt out of, the
21 Settlement Class. 23 individuals, or approximately 0.03% of the Settlement Class, submitted timely
22 written exclusion/opt-out statements to the Claims Administrator.

23 9. Objections to Settlement. Settlement Class Members were also notified in the
24 Settlement Notice of their opportunity to object to the settlement by filing written objections with the
25 Court. After considering all submissions, including the single objection submitted by Settlement Class
26 members, the Court finds that the Settlement is fair, reasonable, and equitable.

1 Member Adin Byron Kimball, the Court nevertheless grants final approval of the proposed Settlement
2 and the Agreement as noted in paragraph 10 of this Order.

3 10. Final Approval of Settlement and Agreement. The Court grants final approval the
4 proposed Settlement and the Agreement submitted with the Plaintiffs’ Motion for Preliminary Approval of
5 Class Action Settlement. The Court finds that settlement on the terms set forth in the Agreement is fair,
6 reasonable, and adequate and that the Settlement is, in all respects, in the best interests of the Settlement
7 Class. Factors considered to assess the fairness, reasonableness, and adequacy of a class action settlement
8 warrant final approval of the Settlement and Agreement. The Court further finds that the Settlement set forth
9 in the Agreement resulted from arm’s-length negotiations. The Parties are ordered to consummate the
10 Agreement in accordance with the terms and provisions of the Agreement.

11 11. Within five (5) days of the Final Effective Date as defined in of the Agreement,
12 Plaintiffs will promptly request a dismissal with prejudice of *Jaci Hutto and Jennifer Melnyk v.*
13 *Albertsons Companies, Inc., et al.*, Case No. 1:19-cv-00412-BLW, in the United States District Court
14 for the District of Idaho, so that the final judgment in this Action will resolve all of their individual and
15 class action claims.

16 12. Payment to Settlement Class. The Claims Administrator shall cause payment to be
17 issued to Settlement Class Members who submitted valid Claim Forms pursuant to the terms for
18 calculating Individual Settlement Payments set forth in Paragraph 40 the Agreement. The Claims
19 Administrator shall either mail settlement checks to Settlement Class Members at their last known
20 addresses via first class United States mail or send payments electronically as requested in the Claim
21 Form submitted within twenty-one (21) calendar days of Defendants remitting the Gross Settlement Sum
22 to the Claims Administrator as set forth in Paragraph 48(d) of the Agreement.

23 13. Service Payment to Plaintiffs. Plaintiffs have applied for awards of service payments
24 as Class Representatives in the amount of \$6,000.00 to each Class Representative (the “Service Awards”).
25 Plaintiffs’ requests for the Service Awards are granted in part as follows: \$5,000.00 is awarded to each Class
26 Representative. In accordance with the Agreement, the Claims Administrator shall make these Service
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1 Awards payments to Class Representatives. The Service Awards shall be delivered to Class Counsel within
2 twenty-one (21) calendar days after receipt of the Gross Settlement Sum.

3 14. Attorneys' Fees to Class Counsel. Class Counsel has applied for an award of
4 attorneys' fees and costs incurred in this Action in the amount of \$265,726.83. Class Counsel's request
5 for attorney's fees and costs is granted. The Court awards \$265,726.83 to Class Counsel for attorneys'
6 fees and costs incurred in this Action. In accordance with the terms of the Agreement, the Claims
7 Administrator shall make this payment to Class Counsel within twenty-one (21) calendar days of after
8 receipt of the Gross Settlement Sum.

9 15. Settlement Expenses. The Court approved the use of American Legal Claims
10 Services, LLC, as the Claims Administrator. The Court hereby approves fees and costs to be paid to the
11 Claims Administrator in the amount of \$50,000. In accordance with the Settlement Agreement, Settlement
12 Expenses shall be paid from the Gross Settlement Sum.

13 16. Release of Claims by Class Representatives. By the Agreement, the General Release
14 of All Claims as identified in Exhibit C to the Settlement, this Final Approval Order, and the Final Judgment,
15 Named Plaintiffs "general release" is approved. Per the language in the separately executed General
16 Release of All Claims, Named Plaintiffs release Defendants from all claims.

17 17. Release of Claims by Settlement Class Members. By the Agreement, this Final
18 Approval Order, and the Final Judgment, the Settlement Class members who have not timely and properly
19 opted out of the settlement have released the Released Parties from any and all claims asserted in an
20 individual and/or class action, collective action or mass action, asserting any claims based on the facts alleged
21 in the complaint in the Action including but not limited to claims under the FCRA or any state and local
22 law equivalent, during the period from and including October 24, 2017, through and including the date
23 of preliminary settlement approval. The Released Claims include claims under the FCRA and equivalent
24 or corresponding state laws, including but not limited to all statutory, compensatory, actual and punitive
25 damages, restitution, declaratory, injunctive and equitable relief, and attorneys' fees and expenses,
26 arising from or related to background checks, investigative consumer reports, and/or consumer reports
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1 ordered through the date of preliminary settlement approval, including the right to seek relief for such
2 Released Claims by means of a class action, collective action or mass action or proceeding. Claims of
3 persons outside of the Settlement Class who were screened after November 25, 2019 are not being
4 released as part of this Settlement. It is expressly intended and understood by the Parties that the
5 Agreement is to be construed as a complete settlement, accord, and satisfaction of the Settlement Class
6 Members' Released Claims. No Settlement Class Member may circumvent the spirit and intent of the
7 release by seeking to join in any way together with any other Settlement Class Members in any action
8 whatsoever, including any mass action under CAFA or otherwise, that asserts such Released Claims.

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10 18. Dismissal of Action. The Court dismisses with prejudice all Released Claims on
11 behalf of the Settlement Class. The Court, pursuant to the General Release signed by Plaintiffs, also
12 dismisses with prejudice Plaintiffs' individual disclosure and authorization claims and any and all of
13 Plaintiffs' other claims, known or unknown, that were asserted, or could have been asserted, against
14 Defendants.

15 19. Binding Effect of Agreement, Order, and Judgment. The Agreement, this Final
16 Approval Order, and the Final Judgment are binding on Plaintiffs and on all Settlement Class Members
17 who have not submitted a timely and valid written notice of intent to opt-out of the settlement, and their
18 respective heirs, administrators, executors, representatives, trustees, successors, and assigns, and shall
19 inure to the benefit of Defendants and the other Released Parties, as well as to their respective, heirs,
20 administrators, representatives, trustees, successors, and assigns.

21 20. Cy Pres Award. The Court designates any *cy pres* award for the Employment
22 Rights Project at Bet Tzedek Legal Services.

23 21. Jurisdiction. Without affecting the finality of the Final Judgment in any way, the
24 Court retains jurisdiction of matters relating to this Order and the administration, interpretation,
25 consummation, and enforcement of the Agreement.


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IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: June 21, 2021



The Honorable Maxine M. Chesney
United States District Judge